



**Legislative Department
Seattle City Council
Memorandum**

Date: July 27, 2010

To: Councilmember Nick Licata, Committee Chair
Councilmember Sally Clark
Councilmember Tom Rasmussen
Housing, Human Services, and Health Committee

From: Ketil Freeman, Council Central Staff

Subject: Nighttime Disturbance Civil Infraction – Substitute Bill

Introduction

Councilmember Licata is proposing to create a new civil infraction in the Seattle Municipal Code (S.M.C). The new infraction is intended to address nuisance behavior in public areas by patrons of nightlife establishments. The proposal stems in part from the work of the Nightlife Advisory Board. The Nightlife Advisory Board was created by the Council through Resolution 31003 to advise the Council on policy issues related to the "promotion, development and sustainability of the nightlife industry."¹ This includes issues related to regulation of the industry and its patrons.

On July 14, 2010, the Housing, Human Services, and Health Committee (HHSHC) discussed the proposed bill and provided preliminary direction to staff on a variety of issues. This memo describes the proposed bill and describes amendments to the bill contained in a proposed substitute (attached on violet).

Proposed Bill

The proposed bill has been developed by Councilmember Licata's Office in consultation with the City Attorney's Office and the Seattle Police Department (SPD). The bill borrows elements from crimes related to nuisance noise², harassment,³ and fighting,⁴ which, for a variety of reasons, have not been useful or effective for regulating disruptive behavior by patrons of nightlife establishments in public areas.

Specifically, existing nuisance noise provisions require that police officers first warn someone and that the offending party continue to make noise prior to that person being subject to arrest. Existing harassment provisions do not apply to circumstances in which mutual belligerents exchange fighting words prior to a fight. And, existing fighting provisions do not apply to circumstances in which mutual belligerents engage in a fight that does not threaten injury to an uninvolved third party's person or property.

The new infraction proscribes certain behavior between midnight and five a.m. in public places in certain areas of town and establishes a civil penalty.

¹ Resolution 31003, Section 3. Adopted December 10, 2007.

² S.M.C. § 25.08.500.

³ S.M.C. § 12A.06.040.

⁴ S.M.C. § 12A.06.025.

Proscribed Behavior

The proposed bill would establish a new nighttime disturbance civil infraction in S.M.C. Title 15. Title 15 governs use of and behavior in public rights-of-way. The infraction would make it unlawful between midnight and early morning for people in a public area to:

- ***Make unreasonable noise*** that is audible from 75 feet away, such as shouting, revving a car engine, of using a noisemaker; or
- ***Threaten another person***, such as using fighting words to instigate a fight; or
- ***Fight another person***, regardless of whether the persons engaged in the fight are mutual belligerents.

Geography and Public Area

The proposed infraction would only apply to behavior in public areas defined as 1) public rights-of-way, 2) parking lots, and 3) the exterior areas of buildings accessible to the public, such as door wells and plazas. Legally permitted sidewalk cafes are *included* in the definition of public area. Outdoor seating areas located on private property that are visible to the public, such as decks, are *excluded* from the definition of public areas. The infraction **would not** reach the behavior of individuals inside nightlife establishments. Additionally, the infraction would only apply in mixed use areas of the City where nightlife establishments currently exist or could be established. This includes all of downtown and commercially zoned areas outside of the downtown core.

Civil Penalty

Violators of the new civil infraction would be subject to citation and a fine with a maximum penalty of \$125 plus statutory assessments.

Reporting

The proposed bill requires that the City Attorney and SPD report to the Council on the utility of the proposed infraction for addressing nighttime disturbance activity by the end of the second quarter in 2011, approximately six months from the potential effective date of the bill. This report would also include a review of where citations are issued.

Substitute Bill (Attached on Violet Paper)

The proposed substitute bill reflects direction provided by the HSHC at its meeting on July 14th as well as housekeeping amendments recommended by Law. The substitute bill would make four changes to Council Bill 116917:

1. The substitute corrects a section numbering drafting error in proposed S.M.C. § 15.48.050.B;
2. Consistent with direction provided by the HSHC, the substitute establishes a maximum total penalty of \$125, which includes statutory assessments; as originally proposed, total fines could exceed \$200 with statutory assessments;
3. The substitute moves the reporting date on the effectiveness of the new civil infraction from the second quarter of 2011 to the end of the third quarter of 2011; and
4. The substitute changes the effective date of the bill to reflect the requirement that noise regulations are subject to review by the Washington State Department of Ecology.